

CM-3453-C-2020 ;
CM-3454-C-2020 ;
CM-3455-C-2020 in/and
RSA-111-2018

2023:PHHC:068952

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(243)

CM-3453-C-2020 ;
CM-3454-C-2020 ;
CM-3455-C-2020 in/and
RSA-111-2018
Date of Decision : 12.05.2023

Kamla Khanna

...Appellant

Versus

Engineer in Chief Haryana PWD B&R and others

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Salil Dev Singh Bali, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-3453-C-2020

Present application has been filed seeking condonation of delay of 23 days in filing the application seeking restoration of the RSA-111-2018.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed and delay of 23 days in filing the application seeking restoration of the RSA-111-2018 is condoned.

CM-3455-C-2020

Present application has been filed for recalling the order dated 20.01.2020, by which, the present regular second appeal was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 20.01.2020 is recalled and the regular second appeal is restored to its original number and status.

CM-3454-C-2020

Present application has been filed for placing on record the documents as Annexures A-1 to A-4 respectively.

Application is allowed and the documents as Annexures A-1 to A-4 are taken on record.

RSA-111-2018

1. The present regular second appeal has been filed challenging the concurrent findings recorded by the trial court vide its judgment and decree dated 09.09.2015 as well as by the lower appellate court vide its judgment and decree dated 11.05.2017 so as to dismiss the suit filed by the appellant-plaintiff.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. Appellant-plaintiff filed a suit claiming promotion to the post of Assistant as well as subsequent promotion thereupon on the ground that she should have been treated senior to Arvind Kumar, who was given

promotion to the post of Senior Assistant w.e.f. 19.06.1987.

4. It may be noticed that there were two cadres, one Field Cadre and another is Head Office Cadre, having separate seniority list of the employees concerned. On being selected and appointed, Arvind Kumar was straight away appointed in the Head Office Cadre, whereas, the appellant-plaintiff was appointed in the Field Office Cadre. In the year 1976, the appellant-plaintiff made a request for change of her Cadre to the Head Office Cadre, wherein, she herself gave in writing that she will only claim the seniority from the date when she shifted to the Head Office Cadre. Keeping in view the request along with the undertaking, the appellant-plaintiff joined the Head Office Cadre on 13.02.1976. The appellant-plaintiff continued working at the Head Office without raising any objection qua the seniority of Arvind Kumar, who was being treated senior to her in the Head Office Cadre. After the appellant-plaintiff completed her service career and retired, she filed a civil suit claiming promotion to the higher rank of Assistant with effect from the date when the said promotion was granted in favour of Arvind Kumar by claiming that she should be declared senior to said Arvind Kumar as both of them were recruited in the Cadre of Clerk in the same selection and she was higher in merit.

5. The trial Court keeping in view the facts and circumstances of the present case and the evidence which came on record, held that as per the undertaking given by the appellant-plaintiff herself, she could only be given seniority in the Head Office Cadre from 13.02.1976 as per her own undertaking submitted while requesting her transfer from Field Cadre to

Head Office Cadre, whereas, Arvind Kumar was working in the Head Office Cadre from 05.09.1973, hence the appellant-plaintiff could not have been treated senior to Arvind Kumar so as to claim benefit of promotion in preference to him and the suit was dismissed. Even the appeal filed challenging the judgment and decree of the trial court dated 09.09.2015 was dismissed by the lower appellate court on 11.05.2017, hence, the present regular second appeal.

6. Learned counsel for the appellant-plaintiff argues that once both the appellant-plaintiff as well as Arvind Kumar were appointed on the same post of Clerk and in the same selection, she should have been declared senior to Arvind Kumar even in the Head Office Cadre after she was transferred in 1976. On being asked as to how seniority can be claimed against an employee without impleading the said employee as a party to the suit, learned counsel has not been able to point out how the suit is maintainable in absence of an employee impleaded as a party to the suit, who is likely to be effected in case, the relief is to be given to the appellant-plaintiff. It is a settled principle of law that in the absence of a party, who is likely to be effected by the outcome of the proceedings, no order can be passed against the said employee, hence, the claim being raised by the appellant-plaintiff against Arvind Kumar to be treated senior to him and that too without impleading him party to the suit cannot be allowed.

6. Even otherwise on merits, it has already come on record that during the entire service career of the appellant-plaintiff starting from the year 1973 or even after joining the Head Office Cadre in February, 1976, no

grievance was raised by the appellant-plaintiff qua further promotion being granted to Arvind Kumar to the post of Assistant in preference to her and all the claims were initiated by the appellant-plaintiff after her retirement. Further, once it is a conceded position that there exist two different Cadres in the service i.e. Field Cadre and Head Office Cadre and separate seniority of employees is being maintained, Appellant-plaintiff can only be granted seniority in the Head office Cadre from the date she joined. Further appellant-plaintiff had already undertaken to claim benefit of service rendered in Field Cadre, hence, keeping in view the facts and circumstances of this case, promotion to the post of Assistant with effect from the date, same was granted to Arvind Kumar on the ground that she should be treated senior to Arvind Kumar, has rightly been declined by the courts below.

7. Learned counsel for the appellant-plaintiff has not been able to point out any perversity in the judgments and decrees of the court below.

8. Keeping in view the above, no ground is made out for any interference by this Court in the present regular second appeal.

9. Dismissed.

May 12, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No